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**APR 05 2006**

**OFFICE OF PETITIONS**

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In re Application of  
David S. Wehrle, et. al.  
Application No. 09/546,089  
Filed: April 10, 2000  
Attorney Docket No. 00AB078

: DECISION ON PETITION  
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition under 37 CFR 1.78(a)(6), filed by facsimile transmission on August 30, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of priority to a prior-filed provisional application. The delay in responding is regretted.

The petition is **DISMISSED AS MOOT** for the reasons stated below.

37 CFR 1.78(a)(2)(ii) indicates that the time periods set forth therein do not apply if the later-filed application is: (1) an application for a design patent; (2) **an application filed under 35 U.S.C. § 111(a) before November 29, 2000**; and (3) a nonprovisional application which entered the national stage after compliance with 35 U.S.C. § 371 from an international application filed under 35 U.S.C. § 363 before November 29, 2000.

Since the instant application was filed prior to November 29, 2000, the provisions of 37 CFR 1.78(a)(6) do not apply. Accordingly, the petition is dismissed as involving a moot issue.

In view of the above, the petition fee of \$1,330 is unnecessary and will be refunded to petitioner's credit card, in due course.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

This application is being referred to Technology Center Art Unit 2116.

Any questions concerning this matter may be directed to Andrea Smith at (571) 272-3226.

  
Frances Hicks

Petitions Examiner  
Office of Petitions

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